



March 16, 2007

ENGROSSED HOUSE BILL No. 1722

DIGEST OF HB 1722 (Updated March 15, 2007 11:44 am - DI 101)

Citations Affected: IC 6-3.1; IC 8-1; noncode.

Synopsis: Coal gasification tax credits and cost recovery. Provides that a facility that produces synthesis gas as a substitute for natural gas is eligible for a coal gasification technology investment tax credit. Requires the utility regulatory commission to allow a utility that purchases substitute natural gas (SNG) to recover any costs arising under the purchase contract through rate adjustments. Amends the definition of clean coal and energy projects to include a project using coal to produce substitute natural gas. Includes certain findings made by the general assembly. Makes conforming changes. Defines an SNG property interest as a right, title, and interest that: (1) is held by an energy utility; (2) is created by a qualified order of the utility regulatory commission; and (3) entitles the energy utility to recover certain costs incurred in purchasing substitute natural gas under a qualified contract. Sets forth provisions governing: (1) the assignment of an SNG property interest; (2) the rights of assignees, financing entities, and SNG sellers; (3) the perfection of a lien and security interest in an SNG property interest; and (4) the obligations of an energy utility after the assignment of an SNG property interest.

Effective: Upon passage.

**Stilwell, Battles, Whetstone, Crooks,
Stevenson**

(SENATE SPONSORS — HERSHMAN, ROGERS, TALLIAN)

January 23, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

January 26, 2007, amended, reported — Do Pass.

January 29, 2007, read second time, ordered engrossed.

January 30, 2007, engrossed. Read third time, passed. Yeas 84, nays 11.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Utilities and Regulatory Affairs.

March 15, 2007, amended, reported favorably — Do Pass.

EH 1722—LS 7187/DI 114+



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March 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1722

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation and utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-29-6, AS ADDED BY P.L.191-2005,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. As used in this chapter, "integrated coal
4 gasification powerplant" means a facility that satisfies all the following
5 requirements:

6 (1) The facility is located in Indiana and is a newly constructed
7 energy generating plant.

8 (2) The facility converts coal into synthesis gas that can be used
9 as a fuel to generate energy **or as a substitute for natural gas.**

10 (3) The facility uses the synthesis gas as a fuel to generate electric
11 energy **or produces synthesis gas that can be used as a**
12 **substitute for natural gas.**

13 (4) The facility is dedicated primarily to serving Indiana retail
14 electric **or gas** utility consumers.

15 SECTION 2. IC 6-3.1-29-15, AS AMENDED BY P.L.122-2006,
16 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 UPON PASSAGE]: Sec. 15. (a) Subject to section 16 of this chapter,

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the amount of the credit to which a taxpayer is entitled for a qualified investment in an integrated coal gasification powerplant is equal to the sum of the following:

(1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.

(2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000) only if the facility is dedicated primarily to serving Indiana retail electric **or gas** utility consumers.

(b) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled for a qualified investment in a fluidized bed combustion technology is equal to the sum of the following:

(1) Seven percent (7%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.

(2) Three percent (3%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).

SECTION 3. IC 6-3.1-29-19, AS AMENDED BY P.L.122-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The maximum tax credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(5) If the facility is an integrated coal gasification powerplant, a requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.

(6) For a project involving a qualified investment in **a an integrated** coal gasification powerplant, a requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date

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that the taxpayer placed the integrated coal gasification powerplant into service.

(7) A requirement that:

(A) one hundred percent (100%) of the coal used:

(i) at the integrated coal gasification powerplant, for a project involving a qualified investment in an integrated coal gasification powerplant; or

(ii) as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers;

must be Indiana coal; or

(B) seventy-five percent (75%) of the coal used as fuel in a fluidized bed combustion unit must be Indiana coal, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is not dedicated primarily to serving Indiana retail electric utility consumers.

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require:

(A) the construction of the taxpayer's integrated coal gasification powerplant, in the case of a project involving a qualified investment in an integrated coal gasification powerplant; or

(B) the installation of the taxpayer's fluidized bed combustion unit, in the case of a project involving a qualified investment in a fluidized bed combustion technology.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

SECTION 4. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 42.1. (a) As used in this section, "substitute natural gas" means pipeline quality gas produced by a facility in Indiana that uses a gasification process to convert coal from the geological formation known as the Illinois Basin into a gas capable of being used:**

(1) by a utility to supply gas utility service to end use consumers in Indiana; or

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(2) as a fuel used by a utility to produce electric power to supply electric utility service to end use consumers in Indiana.

(b) As used in this section, "customer choice program" means a program under which certain residential and commercial gas consumers located in the service area of a gas utility may:

(1) elect to purchase their gas supply from a provider other than the gas utility in the service area; and

(2) receive transportation service from the gas utility in the service area for the delivery of the gas purchased under subdivision (1) to the consumer's premises.

(c) Subject to IC 8-1-8.9 and notwithstanding any other law, if the commission approves a contract for the purchase of substitute natural gas, or electricity generated in connection with the production of substitute natural gas, by a utility, the commission shall allow the utility to recover the following costs on a timely basis throughout the term of the contract:

(1) All costs incurred in connection with and resulting from the utility's purchases under the contract, including the cost of the substitute natural gas and related costs for generation, transmission, transportation, and storage services.

(2) All costs the utility incurs in obtaining replacement gas, if the seller fails to deliver substitute natural gas required to be delivered under the contract, including the price of the gas, and related transportation, storage, and hedging costs, to the extent those costs are not paid by the seller.

(3) Upon petition by the utility, any other costs the commission finds are reasonably necessary in association with the contract.

(d) Any costs recovered under subsection (c):

(1) are in addition to the recovery of other costs; and

(2) shall be made through an adjustment under section 42 of this chapter, or another rate adjustment mechanism that allows for comparable timely cost recovery.

(e) If a customer choice program is implemented, expanded, or renewed for a utility during the term of a contract approved by the commission under subsection (c) that has the effect of reducing the utility's sales volumes, a condition of the authorization of that program must be the proportionate assignment of the gas or electric utility's substitute natural gas purchase obligation to the service providers in the customer choice program.

(f) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the

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term of a contract approved under this section that adversely affects a utility's right to timely recover costs under this section, or to otherwise fully recover such costs.

(g) With respect to utilities that are parties to a contract for the purchase of substitute natural gas approved by the commission under this section, the state covenants and agrees that so long as such contract is in effect the state will not limit, alter, or impair a utility's right to recover costs as provided in this section. Notwithstanding any other law, neither the commission nor any other state agency, political subdivision, or governmental unit may take any action that would have the effect of limiting, altering, or impairing a utility's rights to recover costs as provided in this section.

SECTION 5. IC 8-1-8.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for new energy **production or** generating facilities in Indiana.

(2) The development of a robust and diverse portfolio of energy **production or** generating capacity, including **coal gasification and** the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy **production or** generating facilities, **including coal gasification facilities**, at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy **production or** generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned **or gasified** efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy **production or** generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

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(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's energy **production or** generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy **production or** generating facilities.

(3) The electric transmission **and gas transportation** system within Indiana ~~is~~ **are** upgraded to distribute additional amounts of electricity **and gas** more efficiently.

(4) Jobs are created as new energy **production or** generating facilities are built in regions throughout Indiana.

SECTION 6. IC 8-1-8.8-2, AS AMENDED BY P.L.174-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy **production or** generating facilities that employ the use of clean coal technology and that ~~are fueled~~ **produce energy, including substitute natural gas,** primarily ~~by~~ **from** coal or gases, derived from coal from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy **production or** generating plants that are fueled primarily by coal or gases from coal from the ~~geologic~~ **geological** formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy **production or** generating facility.

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(2) Projects to develop alternative energy sources, including renewable energy projects **and coal gasification facilities.**

(3) The purchase of fuels produced by a coal gasification facility.

(4) Projects described in subdivisions (1) through (3) that use coal bed methane.

SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this

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chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **production or** generating facility and directly or indirectly reduces **or avoids** airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding **or loan guaranty** under ~~its an~~ **an** Innovative Clean Coal Technology **or loan guaranty** program **under the Energy Policy Act of 2005, or any successor program**, and is finally approved for such funding **or loan guaranty** on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. IC 8-1-8.8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy **or substitute natural gas**.

SECTION 9. IC 8-1-8.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

(1) proposes to construct or repower a new energy **production or** generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(4) purchases fuels produced by a coal gasification facility.

SECTION 10. IC 8-1-8.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in this chapter, "new energy generating facility" refers to a **generation or coal gasification** facility that satisfies all of the following:

(1) The facility ~~is fueled~~ **produces energy** primarily ~~by~~ **from** coal or gases from coal from the ~~geologic~~ **geological** formation known as the Illinois Basin.

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(2) The facility is a:

(A) newly constructed or newly repowered energy generation plant; or

(B) newly constructed generation capacity expansion at an existing facility;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, **gas transportation facilities**, and associated equipment employed specifically to serve a new energy generating **or coal gasification** facility.

SECTION 11. IC 8-1-8.8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this chapter, "qualified utility system property" means any new energy generating **or coal gasification** facility used, or to be used, in whole or in part, ~~on a utility system~~ **by an energy utility** to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 12. IC 8-1-8.8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for new energy **producing and** generating facilities in the form of timely recovery of the costs incurred in connection with the construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, or expansion of the new energy generating **or coal gasification** facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, **if applicable**.

(3) The amount of capital investment by the eligible business in the new energy generating **or coal gasification** facility.

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(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

SECTION 13. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy generating **or coal gasification** facility.

(2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month.

(3) Any other information the lieutenant governor may reasonably require.

SECTION 14. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.9. Financing of Substitute Natural Gas Costs

Sec. 1. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an SNG property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. As used in this chapter, "financing entity" means a

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person that provides:

- (1) equity financing; or
- (2) debt financing;

that is secured by an SNG property interest.

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

- (1) is issued by the commission; and
- (2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

- (1) is held by an energy utility or its assignee;
- (2) is created by a qualified order; and
- (3) entitles the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.

Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

- (1) approves the terms of a qualified contract; and
- (2) authorizes the recovery of qualified costs by an energy utility from its customers.

(b) A qualified order issued under this section may not be:

- (1) rescinded;
- (2) nullified; or
- (3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a

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qualified order constitute proceeds of only the SNG property interest that is created by the qualified order.

(c) If the commission issues a qualified order under section 11 of this chapter, the state covenants and agrees, for the benefit of the energy utility and any assignee or financing entity involved, that the state will not take or permit any action that would:

(1) reduce or otherwise impair the value of the SNG property interest created by the qualified order; or

(2) limit, alter, or impair:

(A) the qualified order;

(B) the SNG property interest created by the qualified order; or

(C) qualified costs that are:

(i) imposed on and collected by the energy utility; and

(ii) remitted to the SNG seller;

under the terms of the qualified contract;

until the qualified contract has been performed in full.

Sec. 13. (a) An energy utility may assign an SNG property interest to an assignee, including:

(1) another party to the qualified contract; or

(2) a financing entity.

An assignee may in turn assign an SNG property interest to a financing entity that provides financing to the assignee.

(b) An assignment to a financing entity under this section may be:

(1) an absolute assignment of the SNG property interest; or

(2) an assignment of the SNG property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the SNG property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of substitute natural gas under a qualified contract that forms the basis of an SNG property interest assigned under this section constitutes the property of the assignee. Pending the transfer of the SNG property interest to the assignee, the amounts described in this subsection shall be:

(1) segregated by the energy utility; and

(2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the SNG property interest that is being assigned.

Sec. 14. The interest of an assignee in:

(1) an SNG property interest transferred to the assignee

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under section 13 of this chapter; and

(2) any revenues or collections arising from the SNG property interest transferred;

are not subject to setoff by the energy utility that transferred the SNG property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an SNG property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

(1) the resulting transaction:

(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

(1) the assignee has recourse against the assignor; or

(2) the agreement provides for any of the following:

(A) The assignor's retention of an equity interest in the SNG property interest transferred.

(B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

(1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;

(2) has priority in the order of its filing; and

(3) takes precedence over any subsequent judicial lien or

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1 other creditor's lien.

2 If notice is filed with the secretary of state not later than ten (10)
3 days after value is received for the indebtedness, the security
4 interest is perfected retroactive to the date the value was received.
5 If notice is not filed with the secretary of state within ten (10) days
6 after value is received for the indebtedness, the security interest is
7 perfected as of the date of filing.

8 (c) Transfer of an SNG property interest to an assignee is
9 perfected against all third parties, including subsequent judicial or
10 other lien creditors, upon:

- 11 (1) the delivery of transfer documents to the assignee; and
12 (2) the filing of notice with the secretary of state in accordance
13 with subsection (b).

14 However, if notice of the transfer is not filed with the secretary of
15 state within ten (10) days after the delivery of the transfer
16 documentation, the transfer of the SNG property interest is not
17 perfected against third parties until the notice is filed.

18 (d) The priority of a lien and security interest under this section
19 is not impaired by either of the following:

- 20 (1) A later modification of the qualified order creating the
21 SNG property interest being transferred.
22 (2) The commingling of other funds with funds collected in
23 connection with a qualified contract. Any other security
24 interest that may apply to funds collected in connection with
25 a qualified contract terminates when the funds are
26 transferred to a segregated account for the benefit of the
27 assignee or a financing entity. If an SNG property interest has
28 been transferred to an assignee, any proceeds from the SNG
29 property interest shall be held in trust for the assignee.

30 (e) If a default or termination occurs in connection with a
31 financing secured by an SNG property interest, the financing entity
32 or its representative may foreclose on or otherwise enforce its lien
33 and security interest in the SNG property interest as if the
34 financing entity were a secured party under IC 26-1-9.1. Amounts
35 arising from the qualified contract that is the basis of the SNG
36 property interest shall be transferred to a separate account for the
37 financing entity's benefit and are subject to the financing entity's
38 security interest and lien.

39 Sec. 17. An assignee or a financing party is not considered an
40 energy utility solely by virtue of its participation in any transaction
41 described in this chapter.

42 Sec. 18. Any entity that becomes a successor to an energy utility,

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as the result of:

- (1) any bankruptcy, reorganization, or other insolvency proceeding;
- (2) any merger, sale, or transfer involving the energy utility; or
- (3) the operation of law;

or for any other reason, shall perform and satisfy any obligations of the energy utility incurred under this chapter in the same manner and to the same extent as the energy utility would have been obligated to perform, including the obligation to pay to an assignee any funds collected by the energy utility in connection with the SNG property interest assigned to the assignee.

Sec. 19. An SNG seller that is an assignee may contract with the energy utility, in the qualified contract or in another contract, for the performance of services related to the sale of substitute natural gas under the qualified contract, including:

- (1) the transportation and distribution of substitute natural gas; and
- (2) billing, collection, and other related services;

according to terms and conditions that reasonably compensate the energy utility for its services and adequately secure payment to the SNG seller.

Sec. 20. If an energy utility makes a true sale of an SNG property interest to an SNG seller under section 15 of this chapter, the SNG seller:

- (1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;
- (2) is entitled to all amounts collected by the energy utility from its retail end use customers for the distribution of the substitute natural gas, subject to the terms of the qualified contract; and
- (3) has the same rights to payments made by the energy utility's retail end use customers as does the energy utility that provides the substitute natural gas to those customers.

SECTION 15. [EFFECTIVE UPON PASSAGE] The general assembly finds the following:

- (1) The development of coal gasification facilities in Indiana that would use local coal resources for the production of substitute natural gas is in the public interest for purposes of:
 - (A) reducing the reliance of Indiana energy utilities on gas imports;
 - (B) mitigating price and supply risk;

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1 (C) improving price stability; and
 2 (D) promoting economic development and job creation.
 3 (2) Coal gasification is encouraged by federal policies
 4 intended to increase the energy independence of the United
 5 States, including through the availability of tax incentives and
 6 loan guarantees.
 7 (3) Indiana has the necessary resources and infrastructure
 8 suitable for development of coal gasification facilities.
 9 (4) The receipt of federal incentives for the development,
 10 construction, and financing of new coal gasification facilities
 11 in Indiana will be enhanced by Indiana energy utilities
 12 entering into long term contracts for the purchase of
 13 substitute natural gas produced by such facilities.
 14 (5) It is necessary to allow Indiana energy utilities to recover,
 15 through rate adjustments for the utility's customers, costs
 16 incurred from entering into supply contracts for substitute
 17 natural gas in order to promote the creation of such contracts
 18 without causing Indiana energy utilities to incur undue risk.
 19 SECTION 16. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1722, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 1, line 14, after "electric" insert "**or gas**".
- Page 3, delete lines 34 through 42.
- Page 4, delete lines 1 through 33.
- Page 6, delete lines 11 through 16.
- Page 6, line 35, delete "Indiana".
- Page 6, line 35, delete ".".
- Page 6, line 35, reset in roman "from the geological".
- Page 6, reset in roman line 36.
- Page 6, line 37, delete "Indiana".
- Page 6, line 38, reset in roman "from the geological formation known as the Illinois Basin".
- Page 7, line 11, delete "Indiana".
- Page 7, line 11, reset in roman "of the".
- Page 7, line 12, reset in roman "Illinois Basin".
- Page 7, line 27, delete "Indiana".
- Page 7, line 27, delete ".".
- Page 7, reset in roman line 28.
- Page 7, line 32, delete "Indiana".
- Page 7, line 32, delete ",".
- Page 7, line 32, reset in roman "from the".
- Page 7, line 32, after "geologic" insert "**geological**".
- Page 7, line 32, reset in roman "formation known as the".
- Page 7, line 33, reset in roman "Illinois Basin,".
- Page 8, line 8, after "reduces" insert "**or eliminates**".
- Page 9, line 2, delete "Indiana".
- Page 9, line 2, delete ".".
- Page 9, line 2, reset in roman "from the".
- Page 9, line 2, after "geologic" insert "**geological**".
- Page 9, line 2, reset in roman "formation known".
- Page 9, reset in roman line 3.
- Page 10, line 25, reset in roman "Illinois Basin".

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Page 10, line 25, delete "Indiana".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1722 as introduced.)

CROOKS, Chair

Committee Vote: yeas 11, nays 0.

SENATE MOTION

Madam President: I move that Senator Rogers be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Tallian be added as cosponsor of Engrossed House Bill 1722.

HERSHMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred House Bill No. 1722, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 37, after "means" insert "**pipeline quality**".

Page 3, line 38, delete "manufacturing" and insert "**gasification**".

Page 3, line 38, after "coal" insert "**from the geological formation known as the Illinois Basin**".

Page 4, line 4, delete "an" and insert "**a**".

Page 4, line 10, delete "Notwithstanding" and insert "**Subject to IC 8-1-8.9 and notwithstanding**".

Page 4, line 11, after "gas" insert ", **or electricity generated in**

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connection with the production of substitute natural gas,".

Page 4, line 17, delete "transportation" and insert "**generation, transmission, transportation,**".

Page 7, line 1, delete "eliminates" and insert "**avoids**".

Page 9, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 14. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.9. Financing of Substitute Natural Gas Costs

Sec. 1. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an SNG property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. As used in this chapter, "financing entity" means a person that provides:

- (1) equity financing; or
- (2) debt financing;

that is secured by an SNG property interest.

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

- (1) is issued by the commission; and
- (2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

- (1) is held by an energy utility or its assignee;
- (2) is created by a qualified order; and
- (3) entitles the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.

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Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

- (1) approves the terms of a qualified contract; and
- (2) authorizes the recovery of qualified costs by an energy utility from its customers.
- (b) A qualified order issued under this section may not be:
 - (1) rescinded;
 - (2) nullified; or
 - (3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a qualified order constitute proceeds of only the SNG property interest that is created by the qualified order.

(c) If the commission issues a qualified order under section 11 of this chapter, the state covenants and agrees, for the benefit of the energy utility and any assignee or financing entity involved, that the state will not take or permit any action that would:

- (1) reduce or otherwise impair the value of the SNG property interest created by the qualified order; or
- (2) limit, alter, or impair:
 - (A) the qualified order;
 - (B) the SNG property interest created by the qualified order; or
 - (C) qualified costs that are:
 - (i) imposed on and collected by the energy utility; and
 - (ii) remitted to the SNG seller;

under the terms of the qualified contract; until the qualified contract has been performed in full.

Sec. 13. (a) An energy utility may assign an SNG property interest to an assignee, including:

- (1) another party to the qualified contract; or
- (2) a financing entity.

An assignee may in turn assign an SNG property interest to a financing entity that provides financing to the assignee.

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(b) An assignment to a financing entity under this section may be:

- (1) an absolute assignment of the SNG property interest; or
- (2) an assignment of the SNG property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the SNG property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of substitute natural gas under a qualified contract that forms the basis of an SNG property interest assigned under this section constitutes the property of the assignee. Pending the transfer of the SNG property interest to the assignee, the amounts described in this subsection shall be:

- (1) segregated by the energy utility; and
- (2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the SNG property interest that is being assigned.

Sec. 14. The interest of an assignee in:

- (1) an SNG property interest transferred to the assignee under section 13 of this chapter; and
- (2) any revenues or collections arising from the SNG property interest transferred;

are not subject to setoff by the energy utility that transferred the SNG property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an SNG property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

- (1) the resulting transaction:
 - (A) is a true sale; and
 - (B) is not a secured transaction; and
- (2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

- (1) the assignee has recourse against the assignor; or
- (2) the agreement provides for any of the following:
 - (A) The assignor's retention of an equity interest in the SNG property interest transferred.
 - (B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

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(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

- (1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;
- (2) has priority in the order of its filing; and
- (3) takes precedence over any subsequent judicial lien or other creditor's lien.

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

(c) Transfer of an SNG property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

- (1) the delivery of transfer documents to the assignee; and
- (2) the filing of notice with the secretary of state in accordance with subsection (b).

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the SNG property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

- (1) A later modification of the qualified order creating the SNG property interest being transferred.
- (2) The commingling of other funds with funds collected in connection with a qualified contract. Any other security

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interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an SNG property interest has been transferred to an assignee, any proceeds from the SNG property interest shall be held in trust for the assignee.

(e) If a default or termination occurs in connection with a financing secured by an SNG property interest, the financing entity or its representative may foreclose on or otherwise enforce its lien and security interest in the SNG property interest as if the financing entity were a secured party under IC 26-1-9.1. Amounts arising from the qualified contract that is the basis of the SNG property interest shall be transferred to a separate account for the financing entity's benefit and are subject to the financing entity's security interest and lien.

Sec. 17. An assignee or a financing party is not considered an energy utility solely by virtue of its participation in any transaction described in this chapter.

Sec. 18. Any entity that becomes a successor to an energy utility, as the result of:

- (1) any bankruptcy, reorganization, or other insolvency proceeding;
- (2) any merger, sale, or transfer involving the energy utility; or
- (3) the operation of law;

or for any other reason, shall perform and satisfy any obligations of the energy utility incurred under this chapter in the same manner and to the same extent as the energy utility would have been obligated to perform, including the obligation to pay to an assignee any funds collected by the energy utility in connection with the SNG property interest assigned to the assignee.

Sec. 19. An SNG seller that is an assignee may contract with the energy utility, in the qualified contract or in another contract, for the performance of services related to the sale of substitute natural gas under the qualified contract, including:

- (1) the transportation and distribution of substitute natural gas; and
- (2) billing, collection, and other related services;

according to terms and conditions that reasonably compensate the energy utility for its services and adequately secure payment to the SNG seller.

Sec. 20. If an energy utility makes a true sale of an SNG

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property interest to an SNG seller under section 15 of this chapter, the SNG seller:

- (1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;**
- (2) is entitled to all amounts collected by the energy utility from its retail end use customers for the distribution of the substitute natural gas, subject to the terms of the qualified contract; and**
- (3) has the same rights to payments made by the energy utility's retail end use customers as does the energy utility that provides the substitute natural gas to those customers."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1722 as printed January 26, 2007.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

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